

November 13, 2020



Employers Advocating Economic Opportunity in Idaho®

VIA EMAIL: paula.wilson@deq.idaho.gov

Ms. Paula Wilson
Idaho Dept. of Environmental Quality
1410 North Hilton
Boise, ID 83706

Re: DEQ Negotiated Rulemaking – Rules for the Design and Construction of Phosphogypsum Stacks, Idaho Docket No. 58-0119-2001 (Negotiated Rule Draft No. 2)

Dear Ms. Wilson:

The Idaho Association of Commerce & Industry (IACI) appreciates the opportunity to provide comment on the above-referenced rule.

This rulemaking is in response to the passage of HB 367 in the 2020 Idaho Legislative Session. IACI was involved in the drafting and passage of HB 367 on behalf of our members. The legislation is limited to new requirements for design and construction of phosphogypsum stacks in Idaho. We believe the current draft rule goes well beyond the intent, and plain wording, of HB 367 by creating new siting and operational directives which are not germane to the design and construction of the stacks. There are parts of the draft rule that are not in HB 367 and need to be removed. Specifically:

- The addition in Section 001.02.b regarding the use of phosphogypsum is not needed. HB 367 is focused on design and construction standards. The use of phosphogypsum is already covered in another part of the Department's rules.
- The siting criteria in Section 110 need to be removed; HB 367 does not include siting criteria.
- Proposed requirements for the groundwater monitoring plan go beyond a "groundwater monitoring plan", instead a number of these requirements really deal with operation or other activities. Examples include: Section 160.02.e.iv – data from monitoring devices installed on or within the phosphogypsum stack to measure drainout and Section 160.02.e.v – data from operating a groundwater extraction system.
- Section 190 has language requiring a monthly construction report, implies DEQ oversight of construction and requires a final inspection and report. Such requirements are not in HB 367.

The Department in the recent negotiated rulemaking meeting, indicated further discussion is needed in regards to cost recovery (Section 180). We believe it is important to note that HB 367 authorizes a fee, not a cost recovery agreement.

IACI supports changes made in the rule to remove the seepage test requirement and the removal of Section 200. As discussed in earlier negotiated rulemaking meetings, the application of seepage test requirements to mineral processing impoundments was discussed a number of years ago. The DEQ Board in 2005 did not approve such requirements for mines and mineral processing facilities. Thus, this change by DEQ is consistent with this earlier rulemaking and DEQ Board decision.

Thank you for the opportunity to comment on the proposed rules. IACI again recommends that DEQ not proceed with the rule as drafted.

Sincerely,



Alex LaBeau
President

cc: Alan Prouty, Chair, IACI Environment Committee
Sam Eaton, Office of the Governor
Alex Adams, Director, Division of Financial Management